

**FILED**

IN CLERK'S OFFICE

U.S. DISTRICT COURT E.D.N.Y.  
★ OCT 25 2007 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**BROOKLYN OFFICE**

SMITH,

Plaintiff,

v.

JETBLUE AIRWAYS,

Defendant.

07-CV-3053

October 23, 2007

225 Cadman Plaza East  
Brooklyn, New York

TRANSCRIPT OF CIVIL CAUSE FOR INITIAL CONFERENCE  
BEFORE THE HONORABLE LOIS BLOOM  
UNITED STATES MAGISTRATE JUDGE

**APPEARANCES:**

For the Plaintiff:

NO APPEARANCE

For the Defendant:

AUGUST HECKMAN, III, ESQ.

Court Transcriber:

SHARI RIEMER  
TypeWrite Word Processing Service  
356 Eltingville Boulevard  
Staten Island, New York 10312

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service

1 THE CLERK: Civil Cause for Initial Conference,  
2 Docket Number 07-CV-3053, Smith v. Jetblue Airways.

3 Will the parties please state your names for the  
4 record? There is no appearance by plaintiff. For the  
5 defendant?

6 MR. HECKMAN: For the defendant, August Heckman of  
7 Morgan, Lewis & Bockius.

8 THE COURT: The Honorable Lois Bloom presiding.

9 THE COURT: Good afternoon, Mr. Heckman. This is a  
10 rescheduled initial conference of Mr. Smith's employment  
11 discrimination action under Title VII of the Civil Rights Act  
12 against his former employer Jetblue. Mr. Smith originally  
13 filed this action in the Western District of New York on  
14 January 2, 2006 and the Honorable John Elton transferred the  
15 case here on June 13, 2007.

16 The Court sent out an order scheduling an initial  
17 conference on September 10, 2007 at which time Mr. --

18 [Pause in proceedings.]

19 THE COURT: Just so the transcript reads clearly, we  
20 are in the courtroom and there was a fire alarm that sounded  
21 and we've been told we can disregard the fire alarm.

22 To continue, the Court had scheduled an initial  
23 conference by sending out an order --

24 [Pause in proceedings.]

25 THE COURT: Sorry for the interruption.

1           The Court held the initial conference. Mr. Smith  
2 failed to appear. I rescheduled the conference and gave Mr.  
3 Smith notice and he has again failed to appear for today's  
4 conference.

5           Mr. Heckman, has he contacted you since the time of  
6 the first conference?

7           MR. HECKMAN: No, Your Honor.

8           THE COURT: And Mr. Smith has not contacted the  
9 Court.

10          As I said, after he failed to appear on the initial  
11 conference date by order dated September 12th I ordered  
12 plaintiff to show cause in writing why he failed to appear and  
13 I rescheduled the initial conference to today. Plaintiff was  
14 explicitly warned that if he failed to show good cause for why  
15 he failed to appear at the first conference date or if he  
16 failed to timely appear for today's conference I would  
17 recommend that his case should be dismissed for failure to  
18 comply with the Court's order.

19          That order which was dated September 12th sent to  
20 the address of record for Mr. Smith was not returned to the  
21 Court and the Court presumes that Mr. Smith got notice of  
22 today's conference and has failed to appear. I also note that  
23 there has been no communication to the Court since the case  
24 was transferred.

25          Despite the Court's explicit warning it appears that

1 plaintiff has abandoned this action as he has failed to  
2 appear. The conference today was scheduled for 1:30. Let the  
3 record reflect that it is now 2:41 p.m. Rule 16(f) of the  
4 Federal Rules of Civil Procedure provides that if a party's  
5 attorney fails to obey a scheduling order or pretrial order or  
6 if no appearance is made on behalf of a party at a scheduling  
7 or pretrial conference the judge, upon motion of the judge's  
8 own initiative, may make such orders with regard thereto as  
9 are just and among others any of the orders provided in Rule  
10 37(b)(2)(b) or (c) or (d) under Rule 37 of the Federal Rules.

11 Under 37(b)(2)(c), the Court may dismiss an action  
12 for a party's failure to comply with a court order. The  
13 severe sanction of dismissal with prejudice may be imposed  
14 even against a plaintiff who is proceeding pro se so long as  
15 warning has been given that non-compliance can result in  
16 dismissal. I'm citing to Valentine v. Museum of Modern Art,  
17 29 F.3d 47 at Page 49 (2nd Cir. 1994). This sanction is  
18 available against pro se litigants because "while pro se  
19 litigants may in general deserve more lenient treatment than  
20 those represented by counsel all litigants, including those  
21 proceeding pro se, have an obligation to comply with court  
22 orders. When they flout that obligation they, like all  
23 litigants, must suffer the consequences of their actions."  
24 McDonald v. Head Criminal Court Supervisor, 850 F.2d 121 at  
25 Page 124 (2nd Cir. 1988).

1           The Court has warned plaintiff in no uncertain terms  
2 that I would recommend dismissal of the action if he failed to  
3 appear at today's conference. He has failed without warning  
4 or excuse to twice appear for court ordered conferences or to  
5 respond in any way to the Court's order to show cause. The  
6 interests of justice are not served by giving plaintiff  
7 unlimited chances to comply with court orders. I find that  
8 there is no less drastic sanction than dismissal that would be  
9 effective in this case. I therefore recommend that the Court  
10 should dismiss plaintiff's action. Accordingly, it is  
11 recommended that plaintiff's complaint should be dismissed  
12 pursuant to Federal Rule 37(b)(2)(c).

13           The transcript of today's conference shall be made  
14 part of the Court's record pursuant to 28 United States Code  
15 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
16 Procedure. The parties shall have ten days from service of  
17 the transcript, which means the sending of the transcript to  
18 plaintiff at his address of record, to file written  
19 objections. Any request for an extension of time to file  
20 objections must be made within the ten-day period. Failure to  
21 file a timely objection to this report generally waives any  
22 further judicial review, and I'm citing to Marcella v. Capital  
23 District Physicians Health Plan, Inc., 293 F.3d 42 (2nd Cir.  
24 2002), Small v. Secretary of Health & Human Services, 892 F.2d  
25 15 (2nd Cir. 1989). See Thomas v. Oren, 474 U.S. 140 (1985).

1           Mr. Heckman, as I say, this will be the Court's  
2 report and recommendation. I have read it into the record. It  
3 will be transcribed. The transcript will be made part of the  
4 record. Is there anything further that the Court needs to  
5 address today, sir?

6           MR. HECKMAN: No, Your Honor.

7           THE COURT: Then this matter is adjourned. Thank  
8 you.

9           MR. HECKMAN: Thank you, Your Honor.

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1  
2 I certify that the foregoing is a court transcript from  
3 an electronic sound recording of the proceedings in the above-  
4 entitled matter.



6  
7 Shari Riemer

8 Dated: October 23, 2007  
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